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18

19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC.   Case No. CV 10-03561 WHA

23   Plaintiff,   **DECLARATION OF MARC DAVID
                                         PETERS IN SUPPORT OF ORACLE
24   v.   AMERICA'S MOTION FOR
                                         ADMINISTRATIVE RELIEF TO DEEM
25 GOOGLE INC.   FACTS ADMITTED BY GOOGLE**

26   Defendant.   Dept.: Courtroom 8, 19th Floor
                                         Judge: Honorable William H. Alsup
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PETERS DECL. ISO ORACLE MOTION TO DEEM FACTS ADMITTED BY GOOGLE
CASE NO. CV 10-03561 WHA
sf-3130521

1   I, Marc David Peters, declare as follows:

2   I am an attorney at Morrison & Foerster LLP and am counsel of record to Plaintiff Oracle

3   America, Inc. ("Oracle"). I have personal knowledge of the matters set forth herein and, if called

4   to testify, could and would testify competently to the following.

5   1.   On April 3, 2012, my colleague Daniel P. Muino sent an email to counsel for

6   Google, Inc. ("Google") proposing thirteen separate stipulations for purposes of trial, including:

7   • The specifications for the 37 Java API packages at issue, and the selection, arrangement,

8   and structure of API elements within those specifications, meet the Copyright Act's

9   standard for originality.

10   A true and correct copy of the above-referenced correspondence is attached as Exhibit 1.

11   2.   On April 4, 2012, counsel for Google responded by email, declining to accept the

12   proposed stipulation above. *See* Exhibit 1.

13   3.   On April 10, 2012, I sent an email to counsel for Google proposing alternate

14   stipulations on admissions by Google for purposes of trial, including:

15   • Google has admitted that the 37 Java APIs meet the threshold for originality required by

16   the Constitution.

17   • Google has admitted that the Java programming language is distinct from the Java APIs

18   and class libraries.

19   • Google has admitted that the only way to demonstrate compatibility with the Java

20   specification is by meeting all of the requirements of Sun's Technology Compatibility Kit

21   ("TCK") for a particular edition of Sun's Java.

22   • Google has admitted: TCKs were only available from Sun, initially not available as open

23   source, were provided solely at Sun's discretion, and included several restrictions, such as

24   additional licensing terms and fees. In essence, although developers were free to develop

25   a competing Java virtual machine, they could not openly obtain an important component

26   needed to freely benefit from Sun's purported open-sourcing of Java.

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PETERS DECL. ISO ORACLE MOTION TO DEEM FACTS ADMITTED BY GOOGLE
CASE NO. CV 10-03561 WHA
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1   • Google has admitted: Although Sun offered to open source the TCK for Java SE, Sun

2   included field of use ("FOU") restrictions that limited the circumstances under which

3   Apache Harmony users could use the software that the Apache Software Foundation

4   created. Sun refused the ASF's request for a TCK license without FOU restrictions.

5   The email attached a draft brief explaining the underlying reasoning. A true and correct copy of

6   the above-referenced correspondence is attached as Exhibit 2.

7   4.   On April 11, 2012, counsel for Google responded. Counsel declined to accept

8   most of Oracle's proposals. Counsel placed material qualifications on the first proposal that

9   rendered it unacceptable to Oracle. *See* Exhibit 2. I met and conferred with counsel for Google

10 the evening of April 11, but we were unable to reach agreement.

11   I declare under penalty of perjury that the foregoing is true and correct and that this

12 declaration was executed on April 12, 2012 at San Francisco, California.

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                                        /s/ *Marc David Peters*
14   Marc David Peters

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PETERS DECL. ISO ORACLE MOTION TO DEEM FACTS ADMITTED BY GOOGLE
CASE NO. CV 10-03561 WHA   2
sf-3130521

ATTESTATION OF E-FILED SIGNATURE

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Declaration. In compliance with General Order 45, X.B., I hereby attest that Marc David Peters has concurred in this filing.

Dated: April 12, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs